**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 383 OF 2001**

Durgayya Shantayya Fiske ]
age about 66 years, Occ: Riksha ]
Driver, R/o. Ward No.9/810 ]
Asara Nagar, Lane No. 7, ]
Ichalkarani ]
(Presentyllodged in Kolhapur ]..Appellant
Central Prison -Kolhapur 416007)](Ori.Accused)

versus

The State of Maharashtra ]..Respondents

Mr. K. S. Patil for the Appellant - Original Accused.
Mr. P. S. Hingorani, APP for the Respondents - State.

**CORAM : D. G. DESHPANDE, &**
**V. M. KANADE, JJ.**

**DATE : 22ND DECEMBER,2005**

**ORAL JUDGMENT (PER D. G. DESHPANDE, J.) :**

1. Heard learned Advocate for the Appellant - accused and the learned APP for the Respondents - State.

2. This appeal is filed by the accused who is husband of the victim against his conviction under Section 302 of IPC by which he is sentenced to

suffer imprisonment for life and fine.

3. According to the prosecution case the accused who was a habitual drunkard used to harass his wife and had burnt her alive over a trifle quarrel. There is an eye witness to the incident who is a son. It is an admitted fact that the accused has two wives and children from the second wife and on this count, he was harassing his wife - deceased Amrutabai. On 5.9.2000, the deceased Amrutabai and her son Yuvraj were in the house. At about 4 in the morning accused came in the house under the influence of liquor. He asked his wife Amrutabai not to stay in his house. Perhaps there was a quarrel between them on this, and, the accused took the kerosene can, poured upon her and set her ablaze by lighting the match stick. She received burn injuries, she cried, the son woke up and the neighbours came, they extinguished the fire. she was removed to Civil Hospital Ichalkaranji. Thereafter she was referred to Civil Hospital, Sangli. She was treated there. She expired in the hospital on the same day, but prior to that her dying declaration was recorded at the hospital by Head Constable in presence of the doctor. That was

treated as FIR. Offence under Section 307 of IPC was initially registered. It was subsequently converted to Section 302 of IPC after the death of Amrutabai.

4. During investigation, spot panchnama was made, accused was arrested. Statements of witnesses were recorded, incriminating articles were recovered from the spot as well as the clothes of the accused were sent to the C.A. and after obtaining the report, charge sheet was filed. Prosecution examined 12 witnesses. The most important witnesses were, Yuvraj - son of the deceased and the accused (P.W.1), Geeta Deepak Shingare (P.W. 2), Dr. Appasaheb Suravase, Medical Officer at Ichalkaranji who initially treated Amrutabai (P.W. 3). One other witness Suman Dinappa Terdale who was knowing about strained relations between accused and Amrutabai (P.W. 6). Then Suresh Rangrao Kore who registered the offence (P.W. 7), Dr. Sharad Shamrao Sawant who conducted post mortem (P.W. 10) and Subhash Ramchandra Koli, Head Constable who recorded the dying declaration (P.W. 11) and Parasharam Waman Mane, Investigating Officer (P.W. 12). The trial court believed the case of the

prosecution. The accused has practically no defence.

5. Challenging the conviction, Advocate for the accused contended that the dying declaration was not consistent, it was contradictory to the oral version of Yuvraj, and, it was most likely the case of accident which was converted into the case of murder by the deceased Amrutabai on account of her admittedly strained relations with the accused.

6. On the other hand, learned APP contended that Amrutabai had accepted the second marriage or the second wife of the accused. She had a son and she had no reason to commit suicide. He also pointed out that the evidence brought on record was sufficient to reject the theory of accidental burns. According to him the evidence of Yuvraj, lady in the neighbourhood, and, of the dying declaration, were sufficient to convict the accused and it was rightly done by the trial court.

7. As per Medical report and the evidence of Dr. Appasaheb Annaso Survase (P.W. 3), Amrutabai had 100% burn injuries. Neither in the case of

suicide nor in the case of accidental burns there would be 100% burns. It is highly improbable though not impossible. But the percentage of burns in this case, at least, is a clear indication that they are homicidal burns.

8. The important witness is Yuvraj (P.W. 1) who is son of the accused. He has stated that he has a step mother and step brother but they were residing separately, and the accused used to beat Amrutabai under the influence of liquor. There were two tenants in their house. The accused used to drive rickshaw and this incident took place on 4.9.2000 and 5.9.2000 at about 4 a.m. accused (father) had come on the earlier night of 4.9.2000 at house, there was a quarrel between accused and deceased Amrutabai. Thereafter they slept. Yuvraj woke up because of burning feeling or because of the heat. He saw that his mother was on fire and father was proceeding towards the toilet. He cried to save his mother and asked her mother how she caught fire and mother told him that the accused set her on fire by pouring kerosene on her person. Thereafter, father threw water on Amrutabai and that too after people told him to do so and then Amrutabai was

taken to the hospital. In his presence, doctor asked his mother how she received burn injuries and there also Amrutabai told the doctor it was the accused who had set her on fire by pouring kerosene. The cross examination is absolutely scanty and nothing is brought on record to discredit the witness. There are no material contradictions nor omissions in his evidence. Another important witness is P.W. 2 Dr. Appasaheb Survase who examined Amrutabai at about 5 a.m. in the Casualty Ward. She was having 100% burn injuries. She was brought by her husband. She was shouting at that time. He gave treatment to her and advised her husband that she be taken to the Civil Hospital, Sangli. He has issued injury certificate. Doctor has stated in the cross examination that he informed the police about the patient. Nothing is brought in the cross examination to discredit his evidence. However, the witness has admitted that such injuries are possible due to explosion of stove. He has stated that Amrutabai left Ichalkaranji Hospital at 6.00 a.m. He has issued and proved medical certificate Exhibit 16. Thereafter, important witness is Suman Dinappa Terdale (P.W. 6). She was residing adjacent to the house of the accused. She

has stated that accused is to assault Amrutabai under the influence of liquor. On the morning of 5.9.2000 at about 4 a.m. she heard shouts of a woman. She came out and saw that Amrutabai was in flames and Amrutabai was shouting that her husband had set her on fire by pouring kerosene oil. She has also stated that accused spread water on Amrutabai. It was tried to be suggested to her that her husband was Councillor of Ward belonging to Bhimrao Atigre party and accused has canvassed against him and therefore she was deposing falsely. She denied that suggestion. The next important witness is Dr. Pralhad Narayan Devkar (P.W. 9). He was Medical Officer at Sangli, he was on duty on 5.9.2000. Amruta was brought to the hospital having 98% deep burns. She gave history that her husband poured kerosene and set her on fire. He produced case papers. He has stated that police came to him to record her statement. Thereafter, he examined Amrutabai, gave his certificate that she was in a fit condition to give statement. He proved his endorsement. He has stated that when the police recorded the statement as per the version given by Amrutabai, he himself, the patient and the police were present. The patient was conscious and well

orientated and in a fit condition to give statement. He has produced case papers at Exhibit 32. In cross examination he has stated that he also examined patient mentally at the time of giving treatment. 7% of her face was burnt. He denied the suggestion that lips and cheeks of the patient were having serious burn injuries. He stated that there were injuries on the palms of the patient. According to him, recording of statement by police was started at 7.00 a.m.. He denied the suggestion that the patient was not in a position to depose or state anything. He also denied the suggestion that patient having 98% burn injuries cannot give any statement. In the case papers history is written by the doctor as "Alleged homicidal burns at 4 a.m. on 5.9.2000 by pouring of kerosene by husband and burn history narrated by the patient herself". Thereafter, doctor Sharad Shamrao Sawant (P.W. 10) who performed the post mortem was examined and he has given the cause of death as shock due to 100% mixed burns. He proved the post mortem report at Exhibit 34.

9. Next important witness of the prosecution who proved the dying declaration is P.W. 11 Subhash

Ramchandra Koli. He was Head Constable in Vishrambag Police Station, Sangli. He was on duty in Sangli Civil Hospital when Amrutabai was brought. He has stated that the Medical Officer told him that the patient was serious and her statement should be recorded. He therefore went to the Burns Ward. Doctor was present. He asked the doctor to examine the patient and after obtaining endorsement of the doctor regarding fitness of Amrutabai, he recorded the statement. Thereafter, he obtained thumb mark of thumb of left foot of the patient. He has proved dying declaration at Exhibit 37. In cross examination he has given the timing as 7.00 a.m. as starting of statement and 7.30 a.m. as concluding the statement. He had stated that there was no difficulty for him to call the Executive Magistrate, but he has stated that powers of the Executive Magistrate for recording statement of patient have been withdrawn. He also stated that doctor and the patient were present. He has denied the suggestion that he has recorded the false dying declaration. Dying declaration is proved by him at Exhibit 37. Thereafter panchnama was proved.

10. The only contention of the Advocate for the

Accused was that because of strained relations Amrutabai had falsely implicated the accused. This cannot be accepted in view of the overwhelming strong evidence of the witnesses, discussed above. There are no flaws in the investigation. The witnesses are consistent and the most important aspect is that Yuvraj son of the accused has deposed against his own father. The neighbouring lady has stated that accused used to assault and beat Amrutabai under the influence of liquor. There is therefore no scope to interfere with the judgment of the conviction. In the result, the appeal is dismissed.

(D.G. DESHPANDE, J.)

( V. M. KANADE, J.)